# **ORIGINAL**

# GENERAL ADMINISTRATIVE ORDER OF THE INDIANA UTILITY REGULATORY COMMISSION 2016-3

WHEREAS, Indiana Code § 8-1-26-23(a) establishes the Underground Plant Protection Advisory Committee ("Advisory Committee"); and

WHEREAS, Ind. Code § 8-1-26-23(g) requires the Pipeline Safety Division ("Division") of the Indiana Utility Regulatory Commission ("Commission") to investigate alleged violations of Ind. Code ch. 8-1-26 and forward its findings to the Advisory Committee; and

WHEREAS, Ind. Code § 8-1-26-23(h) provides that the Advisory Committee shall act in an advisory capacity to the Commission concerning the implementation and enforcement of Ind. Code ch. 8-1-26; and

WHEREAS, under Ind. Code § 8-1-26-23(h), the Advisory Committee may make recommendations regarding penalties with respect to persons that the Division has found to violate Ind. Code ch. 8-1-26; and

WHEREAS, under Ind. Code § 8-1-26-23(k), upon receiving a recommendation from the Advisory Committee, and after notice and opportunity for a public hearing, the Commission shall: uphold or reverse the finding of a violation by the Division, approve or disapprove each recommendation of the Advisory Committee, and collect any civil penalties and deposit the penalties in the underground plant protection account established by Ind. Code § 8-1-26-24(a); and

WHEREAS, the Commission desires to provide procedural guidance to persons requesting a public hearing under Ind. Code § 8-1-26-23(k);

WHEREAS, the Commission previously issued guidance in General Administrative Order ("GAO") 2013-8 and has determined that information needs to be updated;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Guidelines regarding a public hearing involving findings of the Division, recommendations of the Advisory Committee, or both, attached to this General Administrative Order as Appendix A, and the service list attached to this General Administrative Order as Appendix B, are hereby adopted by the Commission and GAO 2013-8 is hereby superseded.

CAS	Earl E Frema
Carol A. Stephan, Commission Chair	Sarah E. Freeman, Commissioner
Jan Oft	Absent
James F. Huston, Commissioner	Angela Rapp Weber, Commissioner
David E. Ziegner, Commissioner	
I hereby certify that the above is a true and correct copy of the order as approved.	

Mary M. Becerra

Secretary to the Commission

Date: \_\_\_\_ SEP 2.1 2016

# General Administrative Order 2016-3 – Appendix A

# Request for Public Hearing Under Indiana Code ch. 8-1-26 Guidelines

### I. Request for Public Hearing.

- A. After receiving notice of the Underground Plant Protection Advisory Committee's ("Advisory Committee") recommendation to the Indiana Utility Regulatory Commission ("Commission") under Indiana Code § 8-1-26-23(h), a person, as defined by Ind. Code § 8-1-26-11, may request a public hearing under Ind. Code § 8-1-26-23(k) regarding the findings of the Pipeline Safety Division ("Division"), the recommendations of the Advisory Committee or both. In this appendix and in the proceeding, a person requesting a public hearing under Ind. Code § 8-1-26-23(h) shall be referred to as "Respondent."
- **B.** If a public hearing is not requested, the Commission, upon receiving a recommendation from the Advisory Committee, shall do the following, as applicable: uphold or reverse the finding of a violation by the Division, approve or disapprove the recommendation of the Advisory Committee, and collect any civil penalties and deposit the penalties in the underground plant protection account.
- C. All proceedings after a Request for Hearing is filed shall be governed by the Commission's Practice and Procedure Rules, which are located at 170 IAC 1-1.1, and by the guidance provided in this General Administrative Order.

### II. Public Hearing Process.

- A. A Request for Public Hearing must be filed with the Commission within 30 days of receipt of the notice of the Advisory Committee's recommendation, as outlined in 170 IAC 5-5-3(f). Copies of the Request for Public Hearing shall be served on the Office of Utility Consumer Counselor ("OUCC"), the IURC's General Counsel on behalf of the Pipeline Safety Division, and the Advisory Committee. The Division and the Advisory Committee shall each be parties and designated as "Complainants" in all Requests for Public Hearing cases. The Service List for those parties is attached as **Appendix B**.
- **B.** An individual requesting a public hearing, such as a homeowner, may represent his or her own interest in accordance with 170 IAC 1-1.1-7(a). However, under 170 IAC 1-1.1-7(b), the interest of another person or entity (such as a company or partnership) may only be represented by an attorney who is admitted to practice before the Indiana Supreme Court and who is in good standing.

- C. The Request for Public Hearing and all related filings with the Commission shall comply with Ind. Code ch. 8-1-26, 170 IAC 1-1.1, and any other applicable laws. The Indiana Code and the Indiana Administrative Code may be found on the Commission's website at: http://in.gov/iurc/2657.htm. The Request for Public Hearing and all filings shall comply with the Commission's GAO 2016-2, Submitting Documents Electronically, or any GAO that supersedes GAO 2016-2.
- **D.** In addition to the requirements set forth in 170 IAC 1-1.1-9, the Request for Public Hearing shall include, at a minimum, the following information:
  - 1. The Case Number for which a public hearing is sought; any Case Captions shall follow this format:

IN THE MATTER OF THE PIPELINE SAFETY	)
DIVISION'S INVESTIGATION OF	)
(Respondent's Name) IN PIPELINE	) CAUSE NO.
SAFETY DIVISION CASE NUMBER	<u></u>

- 2. A copy of the letter the Respondent received regarding the disposition of the Case;
- 3. Respondent's contact information, including mailing address, telephone number, email address and fax number;
- 4. Whether Respondent is contesting the Division's findings, the Advisory Committee's recommendations, or both;
- 5. The reasons why the Respondent believes the findings or recommendations are in error;
- 6. The requested relief; and
- 7. Any additional information the Respondent believes is pertinent.
- E. The Commission will docket a properly and timely submitted Request for Public Hearing, assign a Cause number, and schedule a prehearing conference within a reasonable time in accordance with 170 IAC 1-1.1-15. However, the Respondent and other parties may request that the Commission accept an agreed procedural schedule in lieu of conducting a prehearing conference by filing an agreed procedural schedule in accordance with 170 IAC 1-1.1-8 and 1-1.1-15(e).
- F. At the prehearing conference, a procedural schedule will be established that includes dates for the filing of the Complainants Division's and Advisory Committee's cases-in-chief, Respondent's case-in-chief, the OUCC's case-in-chief, any rebuttal by the Complainants Division and Advisory Committee, and a date for an evidentiary hearing. The procedural schedule may be modified, but generally the Complainants file their cases-in-chief first, the Respondent files 30 days after the Complainants, the Public (OUCC) and any intervenors file 30 days after the Respondent, and the Complainants file any rebuttal ten days after the Public and intervenors. The evidentiary hearing is set approximately two weeks after all filings are to be received by the Commission.

- G. The Complainant Division's case-in-chief shall include, at a minimum, the following documents: all documents filed by the excavator and operator in the case and the Division's investigation summary report.
- H. The Complainant Advisory Committee's case-in-chief shall include, at a minimum, the following documents: all documents filed by the excavator and operator in the case, the Division's investigation summary report, the Advisory Committee's recommendation form, and the Advisory Committee's penalty schedule.
- I. The Respondent's case-in-chief shall include any testimony and exhibits that it intends to offer at the evidentiary hearing in support of its Request for Public Hearing, its requested relief, and any response to the Complainant Division's and Advisory Committee's cases-in-chief. Exhibits shall identify the filing party and be numbered sequentially (e.g. Respondent's Exhibit 1, Respondent's Exhibit 2, etc.). Any witness testimony to be offered into the record shall be made under oath or affirmation using the language described in 170 IAC 1-1.1-8(d).
- J. At the evidentiary hearing conducted in the matter, the parties will be afforded an opportunity to offer their respective evidence into the record and to cross-examine the other parties' witnesses.

# General Administrative Order 2016-3 – Appendix B

# **Service List**

#### **OUCC**

Office of Utility Consumer Counselor Attn: Legal Division PNC Center 115 West Washington St., Suite 1500 South Indianapolis, IN 46204 infomgt@oucc.in.gov

### **Pipeline Safety Division**

Indiana Utility Regulatory Commission Attn: Office of General Counsel PNC Center 101 W. Washington Street, Suite 1500 East Indianapolis, IN 46204 jcomeau@urc.in.gov

#### **Underground Plant Protection Advisory Committee**

Indiana Underground Plant Protection Advisory Committee c/o Indiana Utility Regulatory Commission
Attn: Legal Counsel
PNC Center
101 West Washington Street, Suite 1500 East
Indianapolis, IN 46204
dpoon@urc.in.gov